

**207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.10076 of 2013

Date of Decision: April 03, 2017

ASI Sultan Singh

.....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

CORAM:- HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. R.K. Handa, Advocate and
 Mr. Madan Sandhu, Advocate
 for the petitioner(s).

Mr. Hitesh Pandit, Addl. A.G., Haryana.

P.B. BAJANTHRI, J. (ORAL)

Petitioner while working as A.S.I. at Police Station City Jagadhari, had proceeded for 10 days casual leave w.e.f. 04.04.2010. During the leave period, he was arrested in case FIR No.180 dated 09.04.2010 for the offences under Sections 302/452/109/116/120 IPC and 25/54/59 of the Arms Act at Police Station Thanesar (Kurukshetra) for conspiracy with the accused of murder. Arising out the allegations against the petitioner, the petitioner was placed under suspension vide order dated 27.05.2010. Simultaneously, disciplinary authority imposed penalty of stoppage of one annual increment with permanent effect. Appellate Authority while considering the petitioner's appeal against the award of punishment of stoppage of one annual increment with permanent effect, issued show cause notice to the petitioner and enhanced the penalty. Appellate Authority dismissed the petitioner from service on 22.07.2011. Aggrieved against the order of dismissal, petitioner preferred second appeal before the Director General of Police, Haryana. In second appeal, the order of dismissal has

been confirmed on 23.01.2012 which are under challenge.

Learned counsel for the petitioner submitted that First Appellate Authority as well as Second Appellate Authority have not apprised the contentions raised before them and the same were not considered by them while considering the appeals. Both the Appellate Authorities' order reads as under:-

“I have gone through the reply carefully and found the same unsatisfactory. The submissions made by the official in his reply are weightless and baseless which give no relief to him. I have also heard him personally in my office on 19.07.2011. Even during personal hearing he added nothing more in his defence than what he has already submitted in writing. There is no merit in his arguments. In the end he made prayer to excuse him but he deserves no leniency since the charges against him are of gravest nature bordering on criminality which are not tolerable in police force. Policeman who is involved in criminal activities has no place in disciplined police force and requires to be weeded out in the interest of the department as well as Govt. exchequer. In view of above, he deserved punishment nothing short what has been proposed in the said show cause notice. I, therefore, order to dismiss ASI Sultan Singh No.164/A (335/KKR) from service with immediate effect.

A copy of order be supplied to ASI Sultan Singh No.164/A (334/KKR), free of cost.”

Sd/-

Dated: 22.07.2011

*Inspector General of Policeman
Ambala Range, Ambala Cantt.*

“And whereas, I have carefully gone through the appeal, the departmental enquiry file and other relevant documents. The instant departmental enquiry has been conducted as per procedure laid down in PPR and does not suffer from any legal infirmity. Various pleas raised by the appellant have been examined and found to be devoid of merit. Such conduct of police official who is supposed to save people from criminals is highly reprehensible. The punishment awarded to the appellant

is fully justified and commensurate with his misconduct. I find no mitigating circumstances to interfere with the orders passed by the IGP/Ambala Cantt. Hence, the instant appeal is hereby rejected.

A copy of this order shall be supplied to the appellant Ex-ASI Sultan Singh No.164/A (334/KKR), free of cost.”

In view of the above decision of the Appellate Authorities, learned counsel for the petitioner submitted that there is no consideration of the appeals in accordance with law.

Learned counsel for the respondents submitted that having regard to the gravity of charge levelled against the petitioner, the petitioner deserves dismissal from service, therefore, the Appellate Authority in not considering the contentions of the petitioner does not vitiate imposition of penalty of dismissal from service. Thus, the petitioner has not made out the case so as to interfere with the Appellate Authority's orders dated 22.07.2011 and 21.03.2011.

Heard learned counsel for the parties.

Perusal of the orders of the Appellate Authorities it is crystal clear that this is the total non-application of the mind by the Appellate Authority in not considering the contentions raised by the petitioner. Therefore, there is a total non-application of mind by both the Appellate Authorities, hence the decisions of the Appellate Authorities are liable to be set aside. Accordingly Annexures P-2 and P-3 are hereby set aside reserving liberty to the First Appellate Authority Inspector General of Police to consider petitioner's appeal against the stoppage of one increment permanently and so also to reconsider the petitioner's reply to the show-cause notice by enhancement of punishment from one increment stoppage permanently to that of dismissal from the service. The petitioner is directed

to submit additional grounds before the IGP, if any, within a period of two weeks from today. If such additional grounds in respect of the appeal or against the show-cause notice is submitted, the same shall be considered by the Inspector General of Police. It is to be noted that each of the contentions are required to be considered by the Inspector General of Police which were raised against the show-cause notice before passing final orders on each of the issue under Punishment and Appeal Rules i.e., consideration of appeals.

April 03, 2017
ps-I

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No